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SECOND CIRCUIT
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Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

BRYAN HOWDYSHELL,

Plaintiff,

vs.

DERENSIS ASSOCIATES INC dba BLUE
WATER RAFTING, A CORPORATION;
JOHN DOES 1-20; JANE DOES 1-20;
DOE CORPORATIONS 1-20; DOE
PARTNERSHIPS 1-20; DOE
GOVERNMENTAL ENTITIES 1-20.

Defendants.

Civil No. _____.
(Other Non-Vehicle Tort)

COMPLAINT; SUMMONS.

Plaintiff, BRYAN HOWDYSHELL, by and through his attorney, hereby makes the following claims:

PARTIES

1. Plaintiff BRYAN HOWDYSHELL at all times relevant hereto was a resident of California and visitor within the County of Maui, Hawaii.
2. Defendant DERENSIS ASSOCIATES, INC, dba BLUE WATER RAFTING ("Blue Water

EXHIBIT 1

Rafting") is a foreign corporation doing business in the County of Maui, State of Hawai'i, and subject to the jurisdiction of this Court.

3. Plaintiff is presently unable to ascertain the true names of Defendants John Does 1-20, Jane Does 1-20, Doe Corporations 1-20, Doe Partnerships 1-20, Doe Non-Profit Entities 1-20, Doe Governmental Entities 1-20 (herein Doe Defendants), who are therefore sued herein under fictitious names. Doe Defendants are connected with the named Defendants; and/or are the agents, servants, employees, representatives or independent contractors of the named Defendants; and/or were in some manner engaged in the activities alleged herein; and/or were in some manner responsible for the injuries and damages sustained by Plaintiff. Pursuant to Hawai'i Rules of Civil Procedure Rule 17(d), Plaintiff will seek leave of Court to identify and substitute the true names, capacities, and responsibilities of the Doe Defendants when they are ascertained.

JURISDICTION AND VENUE

4. The Circuit Court of the Second Circuit, State of Hawaii, has jurisdiction over this matter pursuant to Haw. Rev. Stat. § 603-21.5.
5. Venue is proper pursuant to Haw. Rev. Stat. § 603-36(5) because the claims for relief arose in this Circuit.

FACTUAL ALLEGATIONS

6. On or about March 12, 2019, Plaintiff was vacationing on Maui, Hawai'i.
7. Plaintiff went on a whale watching expedition on Defendant's Blue Water Rafting rigid aluminum inflatable vessel named "Pineapple Express."
8. The tour advertised itself as "guaranteeing" the sighting of a whale.

9. There were approximately 10 people on the vessel, including the two Blue Water Rafting tour guides, Toby and Sandy, agents of Blue Water Rafting.
10. Toby and Sandy informed Plaintiff and the other guests what to expect during the tour.
11. Plaintiff observed Toby, the captain, smoking furtively on a vape device several times throughout the trip. Toby attempted to conceal the vape pen behind his hand while he smoked.
12. Toby proclaimed several times that the tour was turning into “extreme whale watching” as he drove them farther and farther out to sea, boasting, “No other tour company would ever take you this far out to see whales.”
13. The weather became stormy and threatening and the sea became very choppy. Toby warned, “We are going to pay the piper getting back to shore.”
14. Toby proceeded to drive the boat at high speed, despite the rough conditions.
15. Within five minutes of heading back to shore, a pair of huge waves raised the bow and slammed the boat down.
16. Plaintiff was lifted far off his seat and was slammed down hard onto the lightly-padded bench.
17. Plaintiff heard a sickening crunching sound and was overwhelmed with the most intense pain he had ever felt.
18. No longer able to support his body weight, he fell lengthwise onto the bench, screaming in pain and yelling, “My back, my back!”
19. Plaintiff suffered a traumatic burst fracture of the L2 vertebra, including a compression fracture of the superior endplate of the vertebra with retropulsion of the vertebral body segment and an anterior wedge compression deformity of the vertebral body with 30% to 50% loss of vertebral body height on the right side.

20. The injury left Plaintiff permanently disabled with unremitting, intractable pain.

LIABILITY

COUNT I - NEGLIGENCE

21. Plaintiff alleges and incorporates by reference all preceding paragraphs of the Complaint as though fully set forth herein.

22. Defendant Blue Water Rafting, by and through its agents, had a duty toward Plaintiff to exercise reasonable care to ensure the safety of patrons and the public such as Plaintiff.

23. Defendant breached its duty to Plaintiff by failing to ensure Plaintiff was safe by failing to ensure its agents were sober while entrusted with the safety of Plaintiff; failing to properly navigate the vessel; failing to provide proper seat padding; failing to secure Plaintiff; and taking Plaintiff out in elevated swell conditions.

24. Additionally, Defendant's mode of operation of "guaranteeing" the sight of the whale which results in taking passengers too far from shore in stormy conditions and high swells created a foreseeable risk of harm to Plaintiff.

25. Defendant's breaches and mode of operation were a legal cause of injury to Plaintiff.

INJURIES AND DAMAGES

26. As a direct and proximate result of Defendant's actions, Plaintiff sustained injuries for which he is entitled to be compensated, including but not limited to the following:

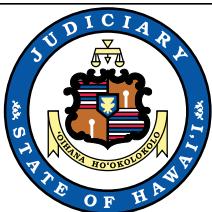
- a. Past, present and future pain and suffering;
- b. Past, present and future mental distress and anguish; and
- c. Health care expenses for past and future treatment related to the above.

WHEREFORE, Plaintiff respectfully requests the following:

- a. That Defendants be found jointly and severally liable for the injuries, damages and losses described above;
- b. That appropriate relief be granted, including awards of general, special, consequential, exemplary and punitive damage awards, in amounts to be proven at trial, along with reasonable attorney's fees and costs, and such other and further equitable relief as the Court deems just and proper.

Dated: Wailuku, Maui, Hawai'i February 26, 2021.

/s/ JACOB K. LOWENTHAL
JACOB K. LOWENTHAL
Attorney for Plaintiff

STATE OF HAWAII CIRCUIT COURT OF THE SECOND CIRCUIT		SUMMONS TO ANSWER CIVIL COMPLAINT
CASE NUMBER		PLAINTIFF'S NAME & ADDRESS, TEL. NO. LOWENTHAL & LOWENTHAL, LLLC JACOB K. LOWENTHAL (9945) 33 N Market St, Suite 101 Wailuku HI 96793
PLAINTIFF BRYAN HOWDYSHELL		
DEFENDANT(S) DERENSIS ASSOCIATES INC dba BLUE WATER RAFTING, A CORPORATION; JOHN DOES 1-20; JANE DOES 1-20; DOE CORPORATIONS 1-20; DOE PARTNERSHIPS 1-20; DOE GOVERNMENTAL ENTITIES 1-20.		
TO THE ABOVE-NAMED DEFENDANT(S)		
<p>You are hereby summoned and required to file with the court and serve upon LOWENTHAL & LOWENTHAL, LLLC JACOB K. LOWENTHAL (9945) 33 N Market St, Suite 101 Wailuku HI 96793</p> <hr/> <p>plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p>THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p>A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
DATE ISSUED _____		<div style="text-align: center;">  <p>Effective Date of 28-Oct-2019 Signed by: /s/ D. Pellazar Clerk, 2nd Circuit, State of Hawai'i</p> </div>
<p>If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation: Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.</p>		

